


8 APR 1977

MEMORANDUM FOR: General Counsel

STATINTL ATTENTION : 
Chief, Freedom of Information
and Privacy Law Division

STATINTL FROM : 
Deputy Director of Personnel

SUBJECT : Request for Opinion

1. In their reminder to GEHA about proposed benefit and rate changes in the Association Benefit Plan (ABP) for 1978, the U. S. Civil Service Commission advised us that any information included in our correspondence with them concerning these proposals is subject to public disclosure under the FOIA. We have been asked to identify items in our submission that we believe are exempt from disclosure under that Act. (See para. 6 Tab A.)

2. Forwarded for your information are copies of correspondence we forwarded to the Commission last year regarding proposed benefit and rate changes for 1977 (Tabs B and C), and a copy of a letter to the Commission from the underwriter of our health plan (Mutual of Omaha) regarding the release of information under the FOIA which they furnish the Commission in their role of underwriter of various health plans under the Federal Employees Health Benefit Program (Tab D).

3. We are concerned that public disclosure of the statistical data which Mutual of Omaha provides to GEHA, which we in turn attach to our correspondence in support of proposed rate changes (see attachment to Tab C), could be analysed and sensitive information concerning Agency employees enrolled in the ABP be obtained. It is requested that you review this matter and provide an opinion so that we may state our position in our cost control report which must be submitted to the Commission no later than April 30, 1977.

STATINTL



Atts

Distribution:

- 0 - Addressee
- 1 - DD/Pers
- 1 - C/BSD (w/held)
- ~~1~~ - C/BSD (OGC Opinion File)
- 1 - C/IB

STATINTL OP/BSD/IB/[REDACTED]jp (8 Apr 77)



UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

RIE

YOUR REFERENCE

STATINTL

March 11, 1977

STATINTL

[REDACTED], President
Government Employees Health
Association
[REDACTED]

STATINTL

Dear [REDACTED]

This is our reminder about benefit and rate proposals for your health benefit plan for the contract term beginning January 1, 1978.

We want to emphasize our continued concern for holding premiums at the lowest possible levels. We would like to see them continue at the 1977 rate or lower if possible. We recognize that premiums reflect the cost of the health benefits provided and the use of health care by enrollees and their families. Therefore, we must continue our efforts to do everything possible to hold down health care costs.

We want to accomplish our objectives while maintaining a broad package of benefits, quality health care, and employee satisfaction. We ask that your submission take the form of three separate documents and that they be submitted to us as soon as possible, but no later than the following dates:

1. Cost Control Report - April 30, 1977
2. Benefit Proposals - April 30, 1977
3. Premium Rate Proposals - July 31, 1977.

No extension beyond these dates can be granted, and we cannot consider until 1978 (when we negotiate 1979 benefits and rates) any proposals received after the deadline dates. Please try to submit your proposals before the deadline dates, so we will have more time to consider, discuss, and negotiate, as well as more "lead" time to print and distribute brochures and pamphlets on benefits and rates, before the open season.

1. Cost Controls. We expect you to continue vigorous cost and utilization control efforts. These cost control efforts and activities should encompass not only claims and contract administration, but also activities with the providers of health care and educating and informing the enrollees who are the users who ultimately bear a substantial part of the cost.

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Your report to us should include actions you have taken to control costs and utilization since your last report to us on such controls, the results of these and other actions, your plans for the future, and expected results.

2. Benefit changes. We must keep premiums as low as possible. For 1978, we will, as usual, consider proposals for perfecting changes that are intended to remedy inequitable situations and that result in no, or only minimal, additional cost. We will also consider proposals for new or improved benefits that result in additional premium cost. Cost will be a major factor in our acceptance or rejection of any benefit proposal, so we urge you to be prudent and practical in proposing new or improved benefits.

Each benefit proposal must be accompanied by your best estimate of its impact on premium (increase or decrease). If, during our analysis of your proposals, we find we need more detailed information, we will ask you for it.

You should also re-evaluate the present benefits of your plan and consider the feasibility of "trade-offs"—reduction in, or elimination of, current benefits in exchange for new or improved benefits for which there has been a demonstrated need. You must justify the benefit reduction or elimination and show that there is a greater need for the new or improved benefit than for the reduced or eliminated benefit.

As a part of this re-evaluation, consider covering alternate, less costly, modes of treatment. For example, consider covering care in facilities that do not meet your present definitions of "hospital," such as specialized institutions, self-care or extended-care facilities or parts of hospitals, when such facilities or institutions are used in lieu of more costly acute hospital accommodations, and when utilization controls can be built into the benefit. Proposals for benefit changes should be specifically and precisely described and supported by (a) estimated increase or decrease in cost, and (b) full explanation or justification for the change.

Please submit proposed brochure language with your benefit proposals. The brochure is the contractual statement of benefits, exclusions, and limitations, so any language changes, statements of revised or additional benefits (including changes in a service area, for group or individual-practice prepayment plans), or corrections of existing errors should be made by the deadline date of April 30 for benefit changes. As in the 1977 brochure, a page entitled "How the Plan Benefits Change in January 1978" will be in the brochure, so you should also submit proposed wording for the changes or clarifications page.

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3. Premium rates. Further instructions about rate submissions will be provided later.
4. Open season. We are considering changes in the open season that might result in improved administration and lower program cost, and be of benefit to employees and the Program in general. These include, but are not limited to, extending the open season from two to four weeks; holding general open seasons at two- or three-year intervals after 1977, rather than every year, possibly with limited-type open seasons under certain conditions during intervening years; eliminating general distribution every year of completely revised brochures, and giving general distribution to separate documents detailing changes and amendments made in brochures; and revising the size, format, and style of brochures.

We would like to have your views on these and your suggestions concerning any other changes you believe should be considered relative to the conduct of open seasons which you believe would improve administration and benefit the Program.

5. Contract changes about the Privacy Act. Under the Privacy Act, Public Law 93-579 (5 U.S.C. 552a), enacted December 31, 1974, and effective September 27, 1975, the Commission is required to publish annually notices of records systems for which it is responsible and routine uses which may be made of information in those systems. The Commission's last notice of its systems of records appeared in the Federal Register on September 24, 1976, Volume 41, No. 187. Two of these records systems provide for routine disclosure of information necessary to support a claim for benefits to health insurance carriers participating in the FEHB program: (1) CSC 2, Civil Service Retirement and Insurance Records; and (2) CSC/GOV'T-3, General Personnel Records. Except for certain disclosures specifically authorized by the law which are not generally applicable to the information the Commission provides carriers, disclosures may be made to carriers from these records systems only in accord with routine uses described in the notices.

To make it clear to employees, carriers and the general public that the Commission is providing personal information about employees to health benefits carriers in accord with the requirements of the Privacy Act, we propose adding the following language to the contracts with all carriers:

The carrier agrees to use the personal data on employees and annuitants which is provided it by agencies and the Commission from personnel, insurance, and retirement records prescribed by the Commission, including the employee's or annuitant's Social Security Number, for only those routine uses stipulated for such data and published in the Commission's Notice of Systems of Records published annually in the Federal Register as required under the Privacy Act, 5 U.S.C. 552a, title 5, United States Code.

The routine use for disclosure of information to health benefits carriers should describe as briefly as possible the purposes for which information on enrollees may be furnished to carriers, consistent with the Commission's contracts with carriers. The "routine use" definition is being reviewed and may be changed. To make clear the purposes for which personnel, insurance, and retirement information may be disclosed to health benefits carriers from the Commission's General Personnel Records System and Retirement & Insurance Records System, the routine use statement in the notice for these systems may be amended to permit disclosure of information:

.....to health insurance carriers contracting with the Commission to provide a health benefits plan under the Federal Employees Health Benefits program to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination of benefits provisions of such contracts.

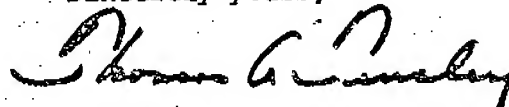
Please indicate in your benefit proposal for 1978 whether you will have any problems in accepting this amendment to the health benefits contract.

6. Disclosure policy under the Freedom of Information Act. Any information included in your cost control report and benefit and rate proposal letters is subject to public disclosure after negotiations with all carriers are completed and new benefits and rates are announced. You should, therefore, identify each item in your cost control report and benefit and rate proposal letters that you believe is exempt from disclosure under the Freedom of Information Act. You should also specify which exemption you believe applies to that item and give full detailed justification for your belief that the exemption applies.

We will decide on disclosure only at such time as request for information is made. In making our decision, we will consider the justification from non-disclosure submitted with your proposal letters.

If we decide that any specific item of information contained in your cost control report or benefit or rate proposals that you state you believe is exempt is not exempt from disclosure, we will so inform you before we disclose.

Sincerely yours,



Thomas A. Tinsley
Director

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION

POST OFFICE BOX 463

WASHINGTON, D. C. 20044

OFFICE OF THE
PRESIDENT

28 APR 1977

Mr. Thomas A. Tinsley, Director
Bureau of Retirement, Insurance
and Occupational Health
United States Civil Service Commission
Washington, D. C. 20415

Dear Mr. Tinsley:

This is in response to your letter of 16 March 1976 concerning submission of rate and benefit proposals for the contract term beginning 1 January 1977.

I have been authorized by the Board of Directors of GEHA to present the following as proposed perfecting changes in the Association Benefit Plan. These changes are minor and are intended to remedy inequity in benefits. I have also indicated our underwriter's calculated biweekly cost of these changes.

1. Provide Basic Benefits for charges to correct congenital anomalies (including protruding ear deformities, harelip, birthmarks, webbed fingers or toes, or other conditions that the Plan may determine to be congenital anomalies but do not include anomalies related to teeth or structures supporting the teeth).
Biweekly Cost: \$.01 Self Only; \$.03 Self and Family.

2. Provide Basic Benefits to cover 80% of the charge of the initial examination of newborn babies. Biweekly Cost: \$.01 Self Only; \$.05 Self and Family.

3. Provide Basic Benefits to cover the full private room charge if the patient's isolation is required by law or the Plan determines that isolation is necessary to prevent contagion. This change is minor in nature and as such is not expected to have sufficient impact on claims to warrant an increase in premium.

Appropriate brochure wording is being prepared to accomplish these changes and marked up copies of the 1976 brochure will be sent to you in the near future.

Sincerely,

STATINTL

28 JUL 1976

Mr. Thomas E. Tinsley, Director
Bureau of Retirement, Insurance
and Occupational Health
U. S. Civil Service Commission
Washington, D. C. 20415

Dear Mr. Tinsley:

This is in response to your letters of March 16 and July 1, 1976, regarding the Association Benefit Plan's benefits and premiums for 1977.

Enclosed is the statistical documentation provided us by our underwriter which reflects that no experience increase in premium is required. With respect to increases resulting from changes in benefits, the proposals for new benefits submitted in our letter of April 29, 1976 would only increase the biweekly net to carrier rates for 1977 by two cents for a self-only enrollment, and eight cents for self-and-family enrollment. In our discussions with the underwriter, we asked that these increases for benefits be absorbed so that the Association Benefit Plan rates might remain unchanged for 1977. They have agreed to do so. Consequently, I propose that the biweekly net-to-carrier rates for the Association Benefit Plan for 1977 remain the same as the 1976 rates.

Regarding your concern for cost and utilization control, we continue to respond to this problem in a most aggressive manner. Our plan will allow benefits on the basis of the norm with consideration being given to complicating circumstances. We question those areas where we feel abuse is taking place and make every effort to see that benefits are paid on the basis of regular and customary charges and proper utilization. We believe our past performance in the payment of claims has shown our efforts in this regard and we will continue to operate in a cost conscious manner.

If additional information is needed, please let me know.

Very truly yours,


President

STATINTL

Attachment:
As stated

Government Employees Health Association
 GMG 1799
 Plan #42

	1975 Actual	1976 Estimated	1977 Projected No Increase
Earned Premium	\$ 9,320,053	\$11,936,720	\$11,936,720
Contingency Contribution	393,000	46,219	-0-
Total Subscriptions	9,713,053	11,982,939	11,936,720
Paid Benefits	8,168,768	9,953,419	11,770,914
Beginning Reserve	2,529,395	2,726,801	3,185,094
Ending Reserve	2,726,801*	3,185,094	3,766,692
Incurred Benefits	8,366,174*	10,411,712	12,352,512
Organization	249,826	305,418	305,418
Underwriter	143,250	166,848	183,533
Taxes	189,652	239,524	283,557
Insurance Charge	69,300	69,300	69,300
Total Expenses	652,028	781,090	841,808
Gain (Loss) Current Year	694,851*	790,137	(1,257,600)
Investment Income	99,371	291,896	348,007
Beginning Cumulative Balance	635,542	1,429,764	2,511,797
Ending Cumulative Balance	1,429,764*	2,511,797	1,602,204

*These figures differ from the end of the year statement because of the increase in the ending claim reserve by \$147,876.

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION
GMG 1799
Plan #42

Premium Projections:

1976: To estimate the 1976 Earned Premium, the Active and Retired Premiums were considered separately.

The average active premium for 1976 (based on January thru April due dates) is \$624,140.38, therefore the Active Earned Premium is equal to

$$A. \$624,140.38 \times 13 = \$8,113,824.94$$

The average ratio of 4 Months Earned to 12 Months Earned for 1974 and 1975 was used to estimate 1976 Retired Earned Premium.

	1974	1975
4 Months	517,627.03	847,737.78
12 Months	1,584,600.21	2,608,096.02
Ratio	.32666	.32504
Average		.32585

1976 1st 4 Months Earned Premium \$1,245,690.47

$$B. (1,245,690.47 / .32585) = \$3,822,895.41$$

Therefore 1976 Estimated Premium equals
 $(\$8,113,825 + \$3,822,895) = \$11,936,720$

1977: In view of the 1976 Experience, no increase in premium is projected. This premium will be adequate to cover projected claims and expenses for 1977, and leave an ending Special Reserve equal to approximately 1 month's premium.

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION

GMG 1799

Plan #42

Paid Claims Estimates:

1976: The paid claims for 1976 were estimated by using ratios of previous years paid claims of this group and applying an average ratio to 1976 claims after six months. The specific ratios result from dividing the twelve months paid claims by six months paid claims for the last three years.

The ratio of 12 months paid claims to 6 months paid claims were:

1975	1.93815
1974	2.01525
1973	2.08150
Average	2.01163

1976 Paid Claims for the first 5 months were \$4,036,054. Paid Claims have been recorded day by day during June. Based upon the amount paid as of June 22, the paid claims for June were estimated at \$911,883. The first 6 months of claims are therefore estimated at \$4,947,937.

1976 Paid Claims equal
 $(4,947,937) (2.01163) = \$9,953,419$

Reserve 12/31/76 as derived on a separate page:
 $(9,953,419) (.32) = \$3,185,094$

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION
GMG 1799
Plan #42

Paid Claims Projection 1977:

Our Claims Research Department has made some projections of recent inflationary trends. These projections indicate an expected annual increase of 19.6% of non-hospital expenses and a 19.4% in-hospital expenses. This inflation increase plus an increase in utilization of this program as indicated by the percentage increase in claims for the last three years has developed a projected increase in 1977 claims over 1976 of 18.26%.

The ratios of paid claims increases for the last three years indicate an increasing trend and substantiate the utilization increase since in each year they exceed the inflation increase of the respective years.

1975/1974	1.16474
1974/1973	1.15157
1973/1972	1.14984

Paid Claims 1977:

$$(9,953,419)(1.1826) = 11,770,914$$

Reserves 12-31-77, as derived on a separate page:

$$(11,770,914)(.32) = 3,766,692$$

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION
GMG 1799
Plan #42

Claims Reserve Evaluation and Estimates:

Date of Reserve	Paid Year	1st 5 Mos Runout	12 Mos Runout	Add'l Runout	Total
12-31-72	1973	1,286,648	1,548,572	149,516	1,698,088
12-31-73	1974	1,562,834	1,704,992	175,000	1,879,992
12-31-74	1975	1,937,595	2,235,917	225,000	2,460,917

Ratios of 5 months runout to Full Reserve.

12-31-72	75.770%
12-31-73	83.129%
12-31-74	78.734%
Average	79.211%

12-31-75 Reserve Evaluation

5 months runout in 1976 \$2,159,926

Therefore, the reserve as of 12-31-75 should have been
(2,159,926/.79211) = \$2,726,801

This is 147,876 higher than the 2,578,925 reserve that was estimated on the 1975 statement sent to you and the Civil Service Commission several months ago.

Estimated Claims Reserves for 12-31-76 and 12-31-77.

Basic Ratio of Full Reserve to Paid Claims for that year:

	Paid Claims	Full Reserve	%
1972	5,296,647	1,698,088	32.059%
1973	6,090,293	1,879,992	30.868%
1974	7,013,374	2,460,917	35.088%
1975	8,168,768	2,726,801	33.380%

These statistics indicate the reserves for the next two years should be 32% of paid claims.

12-31-76: (9,953,419).32 = \$3,185,094

12-31-77: (11,770,914).32 = \$3,766,692

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION
GMG 1799
Plan #42

Projected Biweekly Net to Carrier Rate Distribution 1977

	Self	Self & Family
1976 Rates	12.31	35.27
No Experience	-0-	-0-
Increase proposed		
1977 Rates (Excluding Benefits)	12.31	35.27
Benefit Increases	.02	.08
Total 1977 Rates	12.33	35.35

March 9, 1977

United States Civil Service Commission
Bureau of Retirement, Insurance and
Occupational Health
Washington, D. C. 20415

Attn: George M. MacWhorter

Freedom of Information Act

Section 552(b)(4) of the Freedom of Information Act (Title 5, USC §552) specifically provides an exemption from its disclosure requirements for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Although the U.S. District Court for the District of Columbia has held that rate and benefit proposals are not exempt under §552(b)(4), it apparently did not examine the exempt status of rate justification data in support of benefit and rate proposals. Until the disclosure issue has been resolved by the courts, it is our position that both rate and benefit proposals and rate justification data come within the scope of the §552(b)(4) exemption.

Despite the U.S. District Court's ruling, a strong argument can be made that rate and benefit proposals submitted to the Civil Service Commission are exempt from disclosure under §552(b)(4). Rate and benefit proposals are obviously "commercial or financial" within the meaning of §552(b)(4). In addition, case law indicates that commercial or financial matter is deemed to be "confidential" for purposes of the §552(b)(4) exemption if disclosure will cause substantial harm to the competitive position of the person from whom it was obtained. The leading case involving the §552(b)(4) exemption, National Parks and Conservation Association v Morton, 498 F. 2d 765, 768 (D.C. Cir., 1974), states that the exemption was intended by Congress to "protect persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication." A "proposal," by its very nature, is subject to negotiation and change. If a carrier's proposals regarding either benefits or rates were known to other carriers either before or after a final agreement with the Civil Service Commission, the carrier would clearly be placed in an adverse competitive position. The Affidavit of Thomas A. Tinsley, Director of the Bureau of Retirement, Insurance and Occupational Health of the U.S. Civil

March 9, 1977

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Service Commission further recognizes this "confidential" character of rate and benefit proposals by stating that the Civil Service Commission's "policy of nondisclosure is based on the belief that opening the negotiation process . . . to outside parties or other carriers would impair the efficiency of the process and be detrimental to competition among the carriers."

An application of the standards found in the case law examining the §552(b)(4) exemption, especially the National Parks case, provides an even stronger argument for the exemption of rate justification data under §552(b)(4). Rate justification data, consisting of a carrier's claims experience and costs, is the type of "financial or commercial" information not normally revealed to the public. In fact, the legislative history of §552(b)(4) shows that §552(b)(4) was intended to exempt from disclosure information not normally revealed to the general public. In House Report No. 1497, 89th Cong. 2d. Sess., 2 U.S. Code Congressional and Administrative News, p. 2427 (1966) it is stated that §552(b)(4) "exempts such material if it would not customarily be made public by the person from whom it was obtained."

The "confidential" character of rate justification data is further substantiated by the fact that disclosure of such information would clearly have adverse competitive effects upon the carrier whose position is disclosed and would be of considerable aid to its competitors. Therefore, this information is "confidential" within the scope of §552(b)(4) since disclosure would damage fair competition among carriers. As stated in the "Memorandum in Support of Aetna Life Insurance Company's Opposition to Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment" filed in connection with the lawsuit brought by NAGE against the Civil Service Commission, "cost justification data, indicating what Aetna's current experienced costs are under many programs both inside and outside the government plan, can be of great aid to competitors as it will show where a carrier's strengths and weaknesses lie."

Since the disclosure issue is pending before the U.S. Court of Appeals, rate and benefit proposals, as well as rate justification data, should not be released until the issue is finally resolved by the courts. Notwithstanding the holding of the U.S. District Court, it is our position that rate and benefit proposals are exempt from disclosure under §552(b)(4). In addition, §552(b)(4) provides an even stronger argument for the exemption of rate justification data. Since valid arguments for exemption from disclosure exist, the release of either the proposals or the supporting rate justification data submitted to the Civil Service Commission would be contrary to the intent of the Freedom of Information Act.

March 9, 1977

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In view of our position above outlined we respectfully petition the Commission that we be notified of any requests for any of our filed material.

S. C. Flansburg
Second Vice President
Group Legal

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